CONTRACT #7 RFS # 332.30-01-07

University of Tennessee Health Science Center College of Pharmacy

VENDOR: Galen Publishing, LLC



Vice President for Administration and Finance

RECEIVED

NOV 0 7 2006

711 Andy Holt Tower Knoxville, TN 37996-0174 Phone: (865) 974-2243 Fax: (865) 974-1324

November 6, 2006

FISCAL REVIEW

Mr. Jim White
Executive Director
Fiscal Review Committee
320 Sixth Avenue, North – 8th Floor
Nashville, TN 37243-0057

Dear Mr. White:

The University of Tennessee is submitting a non-competitively bid contract exceeding \$250,000 with Galen Publishing, LLC for review in accordance with Public Chapter 413, Public Acts of 2003.

On December 12, 2001, the UT Health Science Center entered into a contract with Galen Publishing, LLC to produce the "University of Tennessee College of Pharmacy Advanced Studies in Pharmacy Journal". Under this agreement, the university is responsible for academic oversight of the Journal contents which includes providing appropriate accreditation for Pharmacy Continuing Education Credits (CEUs) for Journal materials. Galen Publishing, LLC is responsible under this agreement for the production and distribution of the Journal, obtaining funding for projects specifically related to the Journal, and developing the educational materials for the Journal and related activities. The original contract period was February 1, 2002 through January 31, 2003. The contract provided for automatic annual renewals unless specifically terminated with a minimum 180 day notification period.

Revenues secured by Galen and/or UT provide the Journal's funding support. The grants secured for the Journal come directly to the university for distribution. Under the terms of the agreement UT is entitled to an 8% accreditation fee for grants secured by Galen and a 10% accreditation fee for grants secured by UT. Galen is responsible for any and all expenses associated with the Journal's education programs, including layout, printing, and distribution, which is funded from the remainder of the grant proceeds.

The contract presented to the committee for consideration amends the existing contract to eliminate the automatic renewal clause. This contract has not been before the committee for review as the contract was initiated prior to 2003, did not require any action of our part to renew in subsequent years, and was inappropriately viewed as a revenue contract on our part. The contract amendment corrects these issues and aids in ensuring future contractual amendments, if any, are presented in a timely manner.

Mr. Jim White November 6, 2006 Page 2

Please let me know if you or others have questions or need additional information for the attached contract.

Sincerely,

Sylvia Shannon Davis Vice President for Administration and Finance

Attachment

C: Dr. John D. Petersen

Mr. Anthony Ferrara

Sylvia Shanneul avis

Mr. Anthony Haynes

Dr. William Owen

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RFS#	70. OB						Contract	#			Alex VIII (Alexandra)	
332.30-01-07							N/A					
State Agency							State Agency Division					
Univer	sity of Ter	nessee		-			Health Science Center - College of Pharmacy					
Contrac	tor Name						Contract	or ID#(FEIN or SSN)			
Galen	Publishing	g, LLC					C-	or X	V			
Service Description												
Produce the UT College of Pharmacy Advanced Studies in Pharmacy Journal												
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Mark Each TRUE Statement												
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FY Prior Amendments ONLY					Strain spirite sis (US)		-3-2-1-3-1-1-1-1-1-1-1-1-1-1-1-1-1-1-1-1	lvia Davis, 865-			<u>Oliveria de la composición dela composición de la composición de la composición dela composición dela composición dela composición dela composición de la composición dela composici</u>	
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2007	\$		- \$,530,000.00					re estate		- Designation of the second se
	<u> </u>				,		Sylvia Sh	annon I	Davis, VP Adm	inistr	ation and Fina	ance
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						Funding Gertification (certification, required by T.C.A. § 9-4-5113, that there a balance in the appropriation from which the obligated expenditure is required to paid that is not otherwise encumbered to pay obligations previously incurred).						is required to be
						paid that i	s not otnerv	nse encui	nbered to pay o	Diigaii	ons previously	incureu)
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Contractor Selection Method (complete for ALL base con												
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X Non-Competitive Negotiation Negotiation w/ Government(eg,ID,GG,GU) Other												
Procurement Process Summary (complete for Alternative Method, Competitive Negotiation, Non-Competitive Negotiation, OR Other)												
					partnership th	at results in	n added rev	enues for	the University o	f Ten	nessee College	of Pharmacy
WHICH IS N	which is not obtainable through other means.											

THE UNIVERSITY OF TENNESSEE REQUEST: NON-COMPETITIVE AMENDMENT

Date

EACH REQUEST ITEM BELOW <u>MUST</u> BE DETAILED OR ADDRESSED <u>AS REQUIRED</u> .									
1)	UT Tracking Number:								
2)	Campus/Institute Name:	Memphis							
	EXISTING CONTRACT INFORMATION .								
3)	Short Description:	Galen Publishing produce	Salen Publishing produces the journal UTCOP Advanced Studies in Pharmacy.						
4)	Proposed Vendor:	Name:	Name: Galen Publishing, LLC						
		Vendor Number:							
	Vendor ID:								
5)	Contract #	Contract # #75438							
6)	Contract Start Date:	February 1, 2002							
7)	Current Contract End Date	January 31, 2003 with automatic renewal each year							
8)	Current Total Maximum Co	\$0							
PROPOSED AMENDMENT INFORMATION									
9) Proposed Amendment #									
10)	Proposed Amendment Effe	February 1, 2007							
11)	Proposed Contract End Da	January 31, 2008							
12) Proposed Total Maximum Cost iF all Options to Extend the Contract are Exercised: \$2,530,000									
13)	Approval Criteria: (select one)								
	only one uniquely qualified service provider able to provide the service								
14)	14) Description of the Proposed Amendment Effects & Any Additional Service								

So that the College of Pharmacy can determine the approximate revenue stream from Galen.

15) Explanation of Need for the Proposed Amendment:

So that UT can determine the programs and amounts Galen will procure during the fiscal year.

16) Name & Address of Vendor/Contractor's Current Principal Owner(s): (not required if proposed contractor is a state education institution)

PO Box 340, Somerville, NJ 08876

17) Documentation of Office for Information Resources Endorsement: N/A (required only if the subject service involves information technology)

18) Documentation of Department of Personnel Endorsement: N/A (required only if the subject service involves training for state employees)

19) Documentation of State Architect Endorsement: N/A (required only if the subject service involves construction or real property related services)

20) Description of Procuring Agency Efforts to Identify Reasonable, Competitive, Procurement Alternatives:

Galen Publishing is the only vendor in medical publishing qualified to provide service.

21) Justification for the Proposed Non-Competitive Amendment:

The College has an existing contract with Galen and wishes to expand and modify the agreement.

THE UNIVERSITY OF TENNESSEE CONTRACT AMENDMENT

This amendment is to the contract between the U	Iniversity of Tennessee (hereinafter University and
Galen Publishing, LLC	(hereinafter Contractor), which Contract was signed by the
University on May 20, 2002	
This Contract amendment consists of this cover p	page, the University's Standard Terms and Conditions and
By mutual agreement, the University and the Con	stractor agree to the following amendment:
Amending contract #75438 for the following:	
1. The terms of this amendment are effective February 1, 2007	
2. This agreemnt terminates on January 31, 2008.	
3. The University will pay Galen Publishing up to a total of \$2,5 programs as shown on the attached.	30,000.0 for the reproduction and dissemination of 10-12 ASIP
4. Proposed budget of CE programs in the amount of \$2,750,00	00.00.
5. UT shall only be entitled an accreditation fee equal to 8% of program conducted and disseminated under the University of Toname and logo.	the total grant secured by Galen for each and every educational ennessee College of Pharmacy Advanced Studies in Pharmacy
6. All other terms of this agreement will remain the same.	
All other terms remain unchanged.	
In witness of their acceptance of the terms of this agreem authorized representatives.	ent, the parties have had this Contract executed by their duly
FOR CONTRACTOR:	FOR UNIVERSITY:
Signature	Department Name
Printed Name	Responsible Account (if applicable)
Title	Administrative Signature (optional)
Address	Administrative Printed Name
	Authorized Official Signature
	Authorized Official Name (printed)
Telephone Number	Date

SSN or Fed. ID Number

CE PROGRAM PROJECTION Galen Publishing For the period 7/1/2006-6/30/2007

Amount to COP	16,000.00	16,000,00	16,000.00	24,000.00	16,000,00	20,000,00	36,000.00	16,000.00	28,000.00	32,000.00
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ogram Award	200,000.00	200,000.00	200,000.00	300,000.00	200,000.00	5 250,000.00	450,000.00	200,000.00	350,000.00	400,000.00
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Funding Company	Organon	Biogen/Idec	Ortho Biotech	Pfizer	BMS	KOS Pharma	KOS Pharma	Celgene	BMS	Takeda
Therapeutic Area	Anesthesia	MS	Anemia	Oncology	Cardiology	Dyslipidemia	Dyslipidemia	Oncology	Oncology	Diabetes
Date	January, 2007	January, 2007	January, 2007	February, 2007	February, 2007	March, 2007	April, 2007	May, 2007	May, 2007	May, 2007

220,000.00

\$ 2,750,000.00 \$

TOTAL

STANDARD TERMS AND CONDITIONS

- 1. The University is not bound by this Contract until it is approved by the appropriate University official(s) indicated on the signature page of this Contract.
- This Contract may be modified only by a written amendment which has been executed and approved by the appropriate parties as indicated on the signature page of this Contract,
- The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without
 obtaining the prior written approval of the University.
- 4. Unless otherwise indicated on the reverse, if this Contract provides for reimbursement for travel, meals or lodging, such reimbursement must be made in accordance with University travel policies.
- 5. The Contractor warrants that no part of the total Contract amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor, or consultant to Contractor in connection with any work contemplated or performed relative to this Contract, and that no employee or official of the State of Tennessee holds a controlling interest in the Contractor. If the Contractor is an individual, the Contractor certifies that he/she is not presently employed by the University or any other agency or institution of the State of Tennessee; that he/she has not retired from or terminated such employment within the past six months; and that he/she will not be so employed during the term of this Contract.
- 6. The Contractor shall maintain documentation for all charges against the University under this Contract. The books, records and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment, and shall be subject to audit, at any reasonable time and upon reasonable notice, by the University or the Comptroller of the Treasury, or their duly appointed representatives. These records shall be maintained in accordance with generally accepted accounting principles.
- 7. No person on the grounds of disability, age, race, color, religion, sex, national origin, veteran status or any other classification protected by Federal and/or Temessee State constitutional and/or statutory law shall be excluded from participation in, or be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract. The Contractor shall, upon request, show proof of such non-discrimination, and shall post in conspicuous places, available to all employees and applicants, notice of non-discrimination.
- 8. The Contractor, being an independent contractor, agrees to carry adequate public liability and other appropriate forms of insurance, and to pay all taxes incident to this Contract. The University shall have no liability except as specifically provided in this Contract.
- 9. The Contractor shall comply with all applicable Federal and State laws and regulations in the performance of this Contract.
- This Contract shall be governed by the laws of the State of Tennessee, which provide that the University has liability coverage solely under the terms and limits of the Tennessee Claims Commission Act.
- 11. The Contractor shall avoid at all times any conflict of interests between his/her duties and responsibilities as a Contractor and his/her interests outside the scope of any current or future Contracts. The following principles define the general parameters of a conflict of interests prohibited by the University:
 - A Contractor's outside interests shall not interfere with or compromise his/her judgment and objectivity with respect to his/her duties and responsibilities to the University.
 - B. A Contractor shall not make or influence University decisions or use University resources in a manner that results in:
 - Financial gain outside any current or future Contracts for either the Contractor or his/her relatives or
 - Unfair advantage to or favored treatment for a third party outside the University.
 - C. A Contractor's outside financial interests shall not affect the design, conduct, or reporting of research.

The Contractor certifies that he/she has no conflicts of interests and has disclosed in writing the following:

- Any partners or employees of the Contractor who are also employees of the University.
- B. Any relatives of the Contractor's partners or employees who work for the University.
- C. Any outside interest that may interfere with or compromise his/her judgment and objectivity with respect to his/her responsibilities to the University.
- 12. If the Contractor fails to perform properly its obligations under this Contract or violates any term of this Contract, the University shall have the right to terminate this Contract immediately and withhold payments in excess of fair compensation for completed services. The Contractor shall not be relieved of liability to the University for damages sustained by breach of this Contract by the Contractor.
- 13. It is understood by the Contractor that the University will possess all rights to any creations, inventions, other intellectual property, and materials, including copyright or patents in the same, which arise out of, are prepared by, or are developed in the course of the Contractor's performance under this Contract. The Contractor and the University acknowledge and agree that the Contractor's work under this Contract shall belong to the University as "work-made-for-hire" (as such term is defined in U.S. Copyright Law).

OPERATING AGREEMENT

This Operating Agreement ("Agreement") is made and entered into this 12th of December 2001 by and between Galen Publishing, LLC (hereinafter referred to as "Galen") and The University of Tennessee through College of Pharmacy (hereinafter referred to as "UT"). Galen Publishing will produce the Journal, UNIVERSITY OF TENNESSEE COLLEGE OF PHARMACY ADVANCED STUDIES IN PHARMACY with the University of Tennessee providing the academic base and editorial board for the Journal. The terms of this agreement are as follows:

- UT, will provide University/academic base for the Journal, the editorial board for the Journal, approve or reject any project for the Journal. The UT College of Pharmacy has the right to veto any project if deemed inappropriate for any reason; provide the accreditation for Pharmacy Continuing Education Credits for the material in the Journal, conferences, symposiums or round table discussions that are held in conjunction with the Journal; identify faculty for the Journal or other programs from full-time, part-time, or volunteer UT faculty or from faculty outside UT; work cooperatively with Galen to identify projects for the Journal, symposiums, or round table discussions; identify companies who would be potential sponsors of specific Journal topics.
- Galen, will provide the production and distribution of the Journal, conference or round table discussion proceedings; sales force to call on companies to obtain funding for projects related specifically to the Journal; editorial and meeting management staff for development of educational materials including the Journal, satellite symposiums for meetings and round table discussions on specific topics.
- Galen, a New Jersey Domestic Limited Liability Company, is exclusively recognized and exclusively licensed by UT to solicit unrestricted educational program grants ("grant" or "grants") for purposes of conducting and disseminating educational programs under the UNIVERSITY OF TENNESSEE COLLEGE OF PHARMACY ADVANCED STUDIES IN PHARMACY name and logo.
- During the term of this agreement, Galen is given the exclusive right to conduct and disseminate educational programs under the UNIVERSITY OF TENNESSEE COLLEGE OF PHARMACY ADVANCED STUDIES IN PHARMACY name and logo.
- During the term of this agreement, no party other than Galen, whether affiliated with UT or not, shall have the right to conduct and disseminate educational programs under the UNIVERSITY OF TENNESSEE COLLEGE OF PHARMACY ADVANCED STUDIES IN PHARMACY name and logo.
- So long as this agreement is in effect, UT shall not, in any manner whatsoever, contract, organize, or assist, either internally or with external parties, in the development, solicitation, conduction, and/or dissemination of an educational program format similar to or competing directly with the UNIVERSITY OF TENNESSEE COLLEGE OF PHARMACY ADVANCED STUDIES IN PHARMACY forum. This provision is not meant to impede UT's relationship with existing Journals (i.e. The American Journal of Managed Care) or any other Journals or educational program titles in existence prior to or following the execution of this agreement. The purpose of the provision is to prevent any party, internal or external to UT, from affiliating with UT, in any manner whatsoever, for purposes of creating a new UT Journal or other educational forum that competes or interferes with the purposes of UNIVERSITY OF TENNESSEE COLLEGE OF PHARMACY ADVANCED STUDIES IN PHARMACY.

- Except for rights granted to Galen hereunder, UT retains complete jurisdiction and ownership of UNIVERSITY OF TENNESSEE COLLEGE OF PHARMACY name and logo and any and all other names, logos, symbols, icons, etc. affiliated with the University of Tennessee and/or its College of Pharmacy. Galen retains complete jurisdiction and ownership of the ADVANCED STUDIES IN PHARMACY name and logo and any and all other names, logos, symbols, icons, etc. affiliated with Galen.
- Subject to Provision 7, UT and Galen agree that the copyright to all editorial content for any and all programs disseminated under the UNIVERSITY OF TENNESSEE COLLEGE OF PHARMACY ADVANCED STUDIES IN PHARMACY name and logo will be owned outright and exclusively by Galen.
- 9) Both UT and Galen reserve the right to reject any grant solicited by the other party for purposes of conducting and disseminating educational programs under the UNIVERSITY OF TENNESSEE COLLEGE OF PHARMACY ADVANCED STUDIES IN PHARMACY name and logo.
- Upon accepting any grant solicited by Galen for purposes of conducting and disseminating educational programs under the UNIVERSITY OF TENNESSEE COLLEGE OF PHARMACY ADVANCED STUDIES IN PHARMACY name and logo, UT shall assist in providing faculty recommendations, selection and availability so that programs can be completed in a thorough and timely manner. Further, all program content and participating faculty must receive the approval of UT, since UT alone shall take full responsibility for the academic quality of each program it sponsors and accredits. In addition, by accrediting programs, UT alone shall ensure that all programs meet American Council on Pharmaceutical Education (ACPE) standards and shall, in association with Galen, maintain any and all program information required by ACPE to be kept on file.
- Galen retains complete and absolute control over determining the size of each and every grant and any and all operational issues, excluding Provision 9 and Provision 10 above, or any and all other ACPE related issues, pertaining to the execution of all educational programs conducted and disseminated under this Agreement.
- This agreement shall remain in effect from February 1, 2002 through January 31, 2003 and shall automatically renew for each subsequent twelve (12) month period provided that either party hereto shall have the right to terminating this agreement no less than one-hundred eighty (180) days (notification period) after providing the other party with written notice by registered mail. During the notification period, any and all grants solicited by Galen or UT and accepted by the other party as defined under Provision 10 above shall be conducted and disseminated under good faith and by the provisions set forth herein which bind both UT and Galen.
- Except as other wise provided in this agreement, UT must obtain prior consent from Galen before UT uses THE ADVANCED STUDIES IN PHARMACY name and logo or any and all other names and logos owned by or affiliated with Galen. Conversely, and except as otherwise provided in this agreement, Galen must obtain prior consent from UT before Galen uses the UNIVERSITY OF TENNESSEE COLLEGE OF PHARMACY names, logos, symbols, icons, etc. owned by or affiliated with UT.
- All provisions in this Agreement are assignable, including and subject to Provision 12 above, in the event of transfers of ownership by Galen or organizational and/or departmental restructuring by UT.

- All grants solicited by Galen for purposes of conducting and disseminating educational programs under the UNIVERSITY OF TENNESSEE COLLEGE OF PHARMACY ADVANCED STUDIES IN PHARMACY shall be forwarded directly to UT.
- Galen shall, as under the rights granted it in provision 11, be responsible for any and all expenses associated with any and all educational programs, including any and all expenses associated with participating faculty, conducted and disseminated under the UNIVERSITY OF TENNESSEE COLLEGE OF PHARMACY ADVANCED STUDIES IN PHARMACY name and logo.
- 17) UT shall only be entitled an accreditation fee equal to 5% of the total grant secured by Galen for each and every educational program conducted and disseminated under the UNIVERSITY OF TENNESSEE COLLEGE OF PHARMACY ADVANCED STUDIES IN PHARMACY name and logo. If UT has solicited and secured a grant solely as a result of its own initiative and undertaking for an educational program conducted and disseminated under the UNIVERSITY OF TENNESSEE COLLEGE OF PHARMACY ADVANCED STUDIES IN PHARMACY name and logo, UT shall be entitled an accreditation fee equal to 10% of the total grant.
- Payment of UT's accreditation fee, as defined in provision 17 above shall occur as grants are received by UT. Galen shall receive from UT within 60 days of receipt of the grant by UT the remainder of the grant, after the accreditation fee as well as the honoraria and travel expenses for all participating UT faculty for that particular program are deducted. Galen shall reimburse UT for all participating UT faculty for any particular program where the amount withheld by UT is less than the honorarium and travel expenses. Conversely, UT shall forward to Galen any amount of the grant withheld by UT that exceeds any and all travel expenses for all UT faculty for any particular program.
- Galen agrees to provide UT, on a quarterly basis, with a roster of all "Previously Completed" and "In Progress" educational programs utilizing the UNIVERSITY OF TENNESSEE COLLEGE OF PHARMACY ADVANCED STUDIES IN PHARMACY name and logo.
- 20) UT authorizes Galen to utilize the UNIVERSITY OF TENNESSEE COLLEGE OF PHARMACY ADVANCED STUDIES IN PHARMACY stationery, as provided to solicit grants for purposes of conducting and disseminating educational programs as described herein.
- If the meeting or activity which is the subject of this contract is to occur at a location chosen by the contractor and not at the University of Tennessee, the contractor certifies that this meeting or activity will not occur at an establishment of facility which does not afford full membership rights and privileges to a person because of sex, race, creed, color, religion, ancestry, national origin, or disability.
- The University of Tennessee is self-insured under the provisions of the Tennessee Claims Commission Act, T.C.A. 9-8-301, et seq., which provides for a limited waiver of the State's sovereign immunity in specified cases, up to \$300,000 per claimant and \$1,000,000 per occurrence. Any liability of The University of Tennessee for damages, losses, or costs, arising out of or related to acts performed by the University under this contract is governed by the provisions of said Act.

We hereby agree to all of the provisions set forth above.

GALEN PUBLISHING, LLC

Jack M. Ciattarelli, Member

THE UNIVERSITY OF TENNESSEE

Vice President